

SB 286

## **SPONSOR'S REBUTTAL TO FISCAL NOTE**

**Bill Number:** SB 286 **Date Prepared:** 2/18/2015

**Short Title:** Limit agency rules making if it burdens property rights

**Sponsor:** Senator Cary Smith

**Fiscal Note Version & Date:**

**Generally, why do you disagree with the fiscal note?**

See Attached

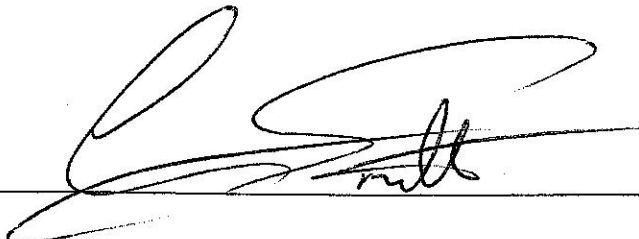
**Specifically, what in the fiscal note do you feel is flawed?**  
(Describe specific assumptions, calculations, technical issues, etc.)

See Attached

**What is your estimate of the fiscal impact?**

SB286

**Sponsor Signature:**



## **Sponsor's Rebuttal to SB 286 Fiscal Note**

The Governor's fiscal note finds the fiscal impact to be unknown. The basic assumption they make is that every action the agencies take restricts property rights. The point of this bill is to establish that only the Legislature has the right to restrict property rights. The restriction applies to only new rules adopted by agencies.

"Property rights" is not so broadly defined as to be meaningless. It is defined as "an owner's rights to possess, use, and dispose of property." The concept of vested property rights is well-defined in property law. Essentially, it means a property right coupled with an investment-backed expectation that's been exercised to some degree.

"Ministerial" is also a well-defined concept in the law of remedies. It means "non-discretionary," or "a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law." For example, issuing a license when the applicant has satisfied all statutory requirements.

This bill does not prohibit rulemaking, and it does not prevent an agency from acting within its lawful scope of authority or from complying with federal law. The bill simply restricts an agency's power to create public policy independently of the legislature. It codifies what should already be the practice in Montana if the state were properly observing separation of powers.

This bill does not hamper the legislative branch, as it explicitly does not apply to "the legislature and any branch, committee, or officer of the legislature." It may require the legislature to act in order to expand an agency's scope of authority, but that should already be practice.

There will be new rules enacted in the future only if there is clear legislative delegation of power to an agency. This will force the legislature and the agency to establish clear boundaries of authority to take actions which restrict property rights.

This will reduce the amount of rules which will be promulgated and reduce the amount of litigation since there is a requirement for clear legislative direction.

This will, in fact, reduce costs and provide protection for property rights.